

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.374 OF 1998

JUDGMENT:

This Second Appeal is preferred challenging the judgment and decree, dated 01.01.1998, in A.S. No.26 of 1992, passed by the learned District Judge, Khammam, whereby and whereunder, the judgment and decree, dated 31.12.1991, in O.S. No.13 of 1989 passed by the learned Subordinate Judge, Sathupalli, is set aside.

2. The appellant herein is the plaintiff and respondent Nos.1 to 5 are defendants Nos.1 to 5, respectively, before the trial Court. However, since respondent Nos.4 and 5 died during pendency of the appeal, respondent Nos.6 and 7 are brought on record as legal representatives of respondent No.4 and respondent Nos.8 and 9 as legal representatives of defendant No.5.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the trial Court.

4. (a) The plaintiff filed suit for declaration of title and for injunction. The plaintiff's case is that he is absolute owner of the suit schedule property admeasuring Ac.0-30 guntas of land situated at Moddula Cheruvu of Yerraboinapalli Village of Sathupalli Taluk, Khammam

District, within specific boundaries as shown in the schedule of property attached to the plaint. His further case is as follows:-

(b) His father viz., Appaiah (in the cause title his name is shown as 'Chalamaiah') purchased the suit schedule property on 20.11.1948 under Ex.A.1 from one Kodamasimham Mangamma under an agreement of sale for a consideration of Rs.200/- and ever since, the father of the plaintiff and after his demise, the plaintiff continued to be in possession and enjoyment of the suit schedule property. He has been paying the land revenue continuously.

The Government also imposed levy to the suit schedule property along with the levy imposed on the other lands of the plaintiff. It is also his case that the Tahsildar, Sattupally - defendant No.3, issued notice to the plaintiff under Section 6 of the Land Encroachment Act, 1905 without any authority and that in spite of issuing reply, the Government granted pattas to defendant Nos.4 and 5 in respect of the suit schedule property. Then the plaintiff again issued notices to defendant Nos.1 to 3 under Section 80 of the Code of Civil Procedure, 1908 (CPC) calling upon the Government to show their right to issue pattas in favour of defendant Nos.4 and 5. Then defendant No.3 replied that the suit schedule property is in Survey No.1430 and it is a poramboke land and that the pattas were issued to defendant Nos.4 and 5. Alleging

that defendant Nos.1 to 4 have no right whatsoever over the suit schedule property and that they were trying to interfere with the peaceful possession and enjoyment of the suit schedule property, plaintiff filed the suit for declaration.

(c) Defendant No.3 filed the written statement and the same is adopted by defendant Nos.1 and 2. Defendant Nos.4 and 5 have not filed any written statement. The specific case of the official defendants is that the suit schedule property is the Government land shown as poramboke in the revenue records. The plaintiff was in unauthorised possession of Ac.0-32 guntas of land in Survey No.1430, and, therefore, he was imposed penalty on 10.12.1979 and that he was issued notices under Section 7 of the Land Acquisition Act, 1894. Plaintiff gave reply contending that the subject land is not the Government land. Since the plaintiff is not a landless poor person, again notices were issued under Section 6 of the Land Encroachment Act, which were served on him on 25.01.1980 and accordingly, he was evicted from the subject land and possession thereof was taken over on 11.03.1980 after conducting panchanama by the Revenue Inspector, Kallur, and the land was entrusted to the Village Patel of Yerraboinapalli village and, therefore, it cannot be said that the plaintiff had been in continuous possession and enjoyment of the property after

11.03.1980. It is also averred that the plaintiff will not get any right or title by virtue of the alleged agreement of sale dated 20.11.1948 as the same is not valid. The suit land was assigned to defendant Nos.4 and 5, who are landless poor persons by the Revenue Divisional Officer under File NO.D.Dis.No.A3/2792/77, dated 22.09.1981, and patta certificates have been issued to them. It is also their contention that the suit is barred by limitation.

5. The trial Court framed as many as nine issues as hereunder:-

- “1. Whether the plaintiff is the owner and possessor of
the agricultural land described in para 1 of the plaint
or whether he is only in an unauthorised possession
of poramboke?
2. Whether the plaintiff comes under the category of landless poor?
3. Whether the plaintiff was evicted from the suit land and whether the possession was taken over 11.03.1980 or whether the Government did not take any action on the suit schedule 1 and continues to be cultivated in the possession of the plaintiff?
4. How did the plaintiff acquired the land to claim that he is the owner and what is the legality and validity of the alleged agreement of sale executed by Kodamasimham Mangamma in favour of the plaintiff's father?

5. Whether the plaintiff was evicted from the Government land admeasuring 0.32 guntas in survey no.1430 and whether the same was assigned to the named persons as detailed in para 3 of the written statement of defendant No.3?
6. Is the suit in time?
7. Whether the defendants 1 to 3 have no right to issue a patta in favour of the defendants 4 and 5?
8. Whether the plaintiff is entitled to the declaration prayed for?
9. Whether the plaintiff is entitled to the injunctions as prayed for?
10. Relief.

6. Plaintiff examined himself as PW.1 besides examining PWs.2 to 4 and marked Exs.A.1 to A.19. On behalf of the defendants, the Mandal Revenue Officer of Kallur was examined as DW.1 and marked Exs.B.1 to B.9.

7. The learned Subordinate Judge, Sathupalli, on appreciation of evidence available on record, came to the conclusion that the suit schedule property may be 'Inam Land' and since Ex.A.1 is 30 years old document, the same can be relied on and even the subsequent possession of the plaintiff corroborates the case of the plaintiff that the plaintiff continued to be in possession of the property and, therefore, he is entitled for declaration of

title and consequential relief of injunction. Accordingly, the trial Court decreed the suit. Aggrieved by the same, the defendants preferred appeal suit. On appraisal, the lower appellate Court came to the conclusion that the suit schedule property is Government land and neither the plaintiff nor his vendors had any right to the suit schedule property and, therefore, the plaintiff did not derive any title over the suit schedule property by virtue of Ex.A.1 as the same is an invalid document. The appellate Court also came to the conclusion that after issuing necessary notices under the Land Encroachment Act, the plaintiff was evicted and the Government after conducting panchanama, possession of the subject land was taken over from him and subsequently, it was assigned to defendant Nos.4 and 5 in the year 1981. The appellate Court also recorded a finding that the plaintiff filed the suit in the year 1989 and he is a rich landlord and defendant Nos.4 and 5 are landless poor persons and, therefore, the plaintiff is not entitled for any relief. Observing that the findings recorded by the trial Court are not proper, allowed the appeal setting aside the judgment of the trial Court. Aggrieved by the same, the plaintiff preferred this second appeal.

8. In the instant second appeal, the following substantial questions of law have been formulated by the plaintiff and this Court at the admission stage, admitted

the appeal having taken into consideration the substantial questions of law raised in the grounds of appeal, thus:

“A) Whether the petitioner (Plaintiff) has acquired title and established his possession from 1948 over the suich (*Sic.* suit) scheduled property consisting of 30 Gts of land in S.No.1430 Yerraboinapally Village, over the Suit Scheduled property and the suit scheduled property is unan land belonging to (Plaintiff) and petitioner presecessor (*Sic.* predecessor) and erroneously classified as poramboke.

B) Whether the petitioner (Plaintiff) and his predecessors in title have been in possession of the Suit property for more than 12 years, and the Government had failed to establish that they had subsistuing (*Sic.* subsisting) title or possession with in 60 years.

C) Whether the plaintiff has perfected title by advers (*Sic.* adverse) possession and in (*Sic.* is) entitle (*Sic.* entitled) for declaration for title against defendant.

D) Whether the village is a Inam village and the scheduled land is not a poramboke.

E) Whether the unregistered sale deed conveys any title so as the claim declaration of title.”

9. Heard Smt. N. Shoba, learned counsel for the appellant, learned Government Pleader for Arbitration appearing for respondent Nos.1 and 2, and Sri

Duggempudi Srinivasa Rao, learned counsel for respondent Nos.6 & 7 and 8 & 9, who are brought on record as legal representatives of respondent Nos.4 and 5, respectively.

The appeal against respondent No.3 - Tahsildar, Sathupalli, Khammam District, was dismissed for default through the order of this Court, dated 01-08-2001.

10. The main contention of the learned counsel for the plaintiff (appellant) is that Ex.A.1 is 30 years old document and the lower appellate Court has failed to consider the said fact. Learned counsel for the plaintiff had relied on the decision of a Division Bench of this Court in **Dr. K.I. Askari and another v. Nawab Mir Barkat Ali Khan @ Waleshan Prince Mukkaram Jah Bahadur, HEH the Nizam VIII**^[1] in support of the contention that the plaintiff can prove his title either by positive evidence or by admissions made by the opposite party. Reliance has also been placed by the learned counsel on the decision rendered by this Court in **Regu Maheshwara Rao v. Vyricherla Kishore Chandra Suryanarayana Deo and others**^[2], wherein the admissibility and evidentiary value of a document of thirty (30) year old was considered.

11. The learned Government Pleader for Arbitration would submit that to draw the presumption as envisaged

under Section 90 of

The Indian Evidence Act, 1872 (for short 'the Act'), the document sought to be relied on shall be admissible and must have legal sanctity; in other words, it is his submission that it must be a registered one. He submits that Ex.A-1 ought to be in accordance with the provisions of Transfer of Property Act. It is his submission that the document under Ex.A-1, dated 20-11-1948, is not a registered one and the plaintiff seeks to take aid of the same to substantiate his title as the source of title is claimed by virtue of purchase by his father from PW.3 and, therefore, the said presumption would not attract.

12. Admittedly, Ex.A-1 is an unregistered document. It is no doubt true, the said document is impounded and penalty was imposed, paid by the plaintiff, but, for the purpose of conveying title, the said document cannot be used and only for collateral purpose as provided under Section 49 of the Registration Act, it may be used, subject to the amendment introduced to Section 49 of the Registration Act is satisfied. According to the plaintiff, Ex.A-1 is an outright sale in favour of his father. But, since Ex.A-1 is an unregistered document, no proprietary title passes thereunder, and it cannot be construed as a valid document in view of Section 17 of the Registration Act. Therefore, the question that falls for consideration is whether the presumption under Section

90 of the Evidence Act can be drawn in favour of the plaintiff? Therefore, the decisions relied on by the learned counsel for the plaintiff in **HEH the Nizam VIII's Case** (Supra 1) and **Regu Maheshwara Rao's Case** (Supra 2) would not render any assistance to substantiate the plea put forth by him.

13. It is a typical case, as can be seen from the divergent pleas put forth by the plaintiff from stage to stage. Inceptually, the appellant has set up his title based on title deed, but, when having got alerted that the title deed is inadmissible in evidence for want of registration, has fallen back on perfection of title by adverse possession based on the entries in the pahani patrikas for the years 1962 till 1982, marked as Exs.A-10 to A-19. His main plea is that he had been in possession for more than twelve (12) years and the entries in Exs.A-10 to A-19 would substantiate the same. Firstly, it has to be observed that a party simultaneously cannot plead source of title based on a title deed and perfection of title by adverse possession. It has to be inferred that the suit property is Government land as the suit property is described as "sarkari" under vertical column No.11 of the pahanies filed by the plaintiff himself.

14. No doubt, at one stage, the plaintiff intended to change the nature of the suit land by contending that it is an 'Agraharam land' granted by the erstwhile Nizam to

PW.2 and others and proceeded on that premise in prosecuting the suit by even suggesting the same to the witnesses. But, in the face of entries recorded in Exs.A-10 to A-19 filed by the plaintiff showing the land as “sarkari” under vertical column No.11, it is unnecessary to debate on the said aspect any further in arriving at the conclusion that the suit land is Government land. It appears that the plaintiff, somehow, to wriggle out of the consequences of the entries in the said pahanies, attempted to project the suit land as Agraharam land, in which attempt, he completely failed.

15. Even the evidence on record, in fact, clinchingly establishes that the suit land is Government land, since not only the entries in the pahanies would reflect the same, but, even Exs.B-7 and B-8, which relate to the period prior to issuance of notices in Form No.7(1), dated 10-12-1979, but also Form No.6(b), dated 20-05-1980, under Exs.B-1 and B-3, respectively. It is no doubt true, the plaintiff got issued a reply, dated 24-12-1979, under Ex.B-2, to the notice issued by the Government under Ex.B-1. But, merely getting a reply issued would not aid him in establishing his title over the suit property. The first appellate Court has resorted to reappraisal of oral and documentary evidence and even made a definite observation that PW.2, Village Patel, could not have collected penalty over the suit property and could not

have noted in Ex.A-7 as poramboke land. Thus, what all can be concluded on the nature of land is that it is not an 'Agraharam land' and it is Government land. Since the plaintiff is claiming title over the suit land based on Ex.A-1, an unregistered document under which no title to the property got transferred, it has to be held that there is no semblance of case for him to establish his title. As already referred to in the above, it is not open for the plaintiff to shift his stand to adverse possession when he failed to prove his interest over the suit land through the title deed on which he placed reliance. Therefore, even the entries in Exs.A-10 to A-19 showing the name of the plaintiff under possessory column would not render any assistance to him.

16. Concerning possession of the plaintiff over the suit land, PW.2 tried to support the case of the plaintiff and even PW.3, who is claimed to be the vendor of PW.1's father. PW.3 asserts as to execution of Ex.A-1. But, even in her chief-examination itself, she asserts that she cannot say the name of the adjacent owners of the suit land and its survey numbers also. Be that as it may, even the evidence of PW.3 is of no consequence when the very document under Ex.A-1 is an unregistered one.

17. Concerning possession of the plaintiff for more than twelve (12) years, admittedly, the subject land is

Government land and mere possession for 12 years would not satisfy the requirement of perfecting title by adverse possession. The plaintiff has not projected the exact point of time from which his possession commenced as adverse possession so far as the Government is concerned. In fact, PW.2 has answered to a question in his cross-examination expressing his ignorance as to whether PW.3 has got any right to alienate the land to PW.1 and that itself is sufficient enough to assess the conduct of PW.2, as he did not incline to reveal the truth having steeped into witness box.

He stepped into the witness box only to assist the plaintiff being the erstwhile Village Patel since the said post was abolished. The very fact that notices of penalty were issued to the plaintiff by the Revenue Inspector, under Ex.A-5, Levy Demand Notice in Form - C, dated 11-11-1974, showing the relevant details for payment of four quintals of produce as per Clause - 3 of

The Andhra Pradesh Paddy Procurement (Levy) Orders. Ex.A-6 is also 'Levy Demand Notice' requiring him to pay the produce by 15.12.1975. They do not help him to substantiate his title for the reason that they do clinchingly establish that he is a 'permissive possessor'. Thus, Exs.A-5 and A-6 also would condemn the case of the plaintiff, in regard to his claim based on Ex.A-1.

Thus, the substantial questions of law formulated through 'A, B and C' are concerned, as already discussed in the

above, it has to be held that the same are not substantiated.

18. Even the question of law agitated by the plaintiff as to whether the village is 'inam land' and the schedule land is not a 'poramboke land' is concerned, nothing is placed on record to prove the same and, certainly, no burden can be cast on the defendant. The other substantial questions of law as to whether the unregistered sale conveys any title claiming for declaration of title is concerned, as already discussed in the above, it has to be held that the same is not helpful as no title can be conveyed under an unregistered sale deed.

19. Thus, the Second Appeal fails and is dismissed confirming the judgment and decree passed by the lower appellate Court.

There shall be no order as to costs.

20. Consequently, Miscellaneous Applications, if any, pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

October 9, 2015.

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[\[1\]](#) 2010 (4) ALD 244 (DB)

[\[2\]](#) 2011 (2) ALD 536